

OGC HAS REVIEWED.

13 November 1951

MEMORANDUM FOR MR. HOUSTON

SUBJECT: Impact of Whitten Rider on CIA

1. In accordance with your request I have considered Section 1310 of P. L. 253, 82d Congress, and its possible effect on personnel administration as conducted in CIA. In considering this statute and in attempting to develop an accurate idea of legislative intent, I have referred to such extrinsic aids as the Congressional Record, Conference Reports and statutes "in pari materia," e.g., Sec. 1302 of P. L. 843, 81st Congress, sometimes cited as the "Supplemental Appropriation Act of 1951."

2. It is my opinion that the aforesaid aids are not helpful in developing any particular ideas of inclusion or exclusion and that Congress was legislating in the usual field of housekeeping functions of the Government, that is, in the area of personnel administration. If there is any such thing as legislative intent in connection with this statute, I believe it is to be found in the first sentence of Chapter XIII of the Report from the Committee on Appropriations, House of Representatives, which reads as follows: "The general provisions included in this bill cover all agencies and corporations of the Federal Government and are, with one exception, substantially the same as those which have been carried in previous years."

3. Before analyzing the language and terms of P. L. 253, I believe it germane to consider Sec. 1302 of P. L. 843, 81st Congress and Executive Order 10180, dated 13 November 1950, and certain determinations and letters written by the official representatives of this Agency in connection therewith.

4. Section 1302 of P. L. 843 prevented further expansion in the number of Federal employees in the Federal civil service and encouraged the transfer of career employees to defense activities, among other things.

5. In effectuating the purpose of Sec. 1302 of P. L. 843, Executive Order 10180 provided in Sec. 1(a) thereof as follows:

"...Provided, that permanent appointments are authorized whenever, in unusual circumstances, the Civil Service Commission for positions in the competitive service, or the head of the agency concerned for positions outside the competitive service, determines that permanent appointments are in the interest of the Government:..."

6. By letter dated 19 October 1950 the Acting Executive wrote to Mr. Roger W. Jones in connection with the limiting effect of the then proposed executive order and recommended the insertion of certain language, to wit, "in unusual circumstances," in order that the problem might be satisfactorily resolved with the Civil Service Commission.

7. It would appear, therefore, that this Agency in interpreting and conducting its program in personnel administration recognized its responsibility in connection with its "positions outside the competitive service." It is to be noted that this term is not found in Sec. 1302 of P. L. 843, the related term being "in the Federal civil service."

8. Subsequent thereto, by determination dated 11 December 1950, the Director of Central Intelligence issued a directive to the Personnel Director to the effect that because of security hazards permanent appointments for positions outside the competitive service (in the Central Intelligence Agency) were in the interest of the Government and, therefore, all personnel appointments thereafter would be made on such basis. There is therefore, insofar as CIA is concerned, an administrative interpretation of the term "outside the competitive service."

9. This becomes material in now considering P. L. 253 of the 82d Congress wherein certain phrases and language characteristic of the Executive Order, and not of the antecedent statute, are found. As stated heretofore, the Committee Report deals not in specific terms but in broad sweeping phrases of general applicability. It is presumed, therefore, that it was the legislative intent that the articulation of the statute be as broad as possible.

10. Section 1310(a) of the statute now under discussion imposes an obligation upon the heads of the executive departments to make full use of their authority to require that initial appointments "outside the competitive civil service" be made on a temporary or indefinite basis in order to prevent increases in the number of permanent Federal employees. On a literal reading, therefore, of subparagraph (a) of Sec. 1310, it appears clear that CIA

comes within the extension of the term. The remainder of subparagraph (a) is concerned with reinstatements and promotions, and it is to be noted in this connection that the related phrase or term is "in the Federal civil service."

Thereby not being required to appear for review
11. Hence, although the argument might be advanced that outside the competitive civil service is equivalent to the excepted appointment authorities, it appears somewhat hazardous to do so in the light of our previous interpretations and action. However, at best this is merely an argument as outside the competitive civil service might well include excepted appointments and ungraded personnel of the Federal service.

12. Subparagraph (b) of Sec. 1310 is not applicable on its face, and no comment appears necessary.

13. Subparagraph (c) of Sec. 1310 is directed at the evil of excessively rapid promotions in the competitive civil service and the correction of improper allocations to higher grades of positions subject to the Classification Act of 1949. The second sentence of subparagraph (c) is directed at a class of people whose positions are subject to the Classification Act.

14. Therefore, the succeeding proviso should be related to its antecedent and hence the phrase "and the head of the employing agency for positions outside the competitive service" may now be related to a specific portion of the group considered to be outside the competitive service, namely, those under the excepted appointment authorities. At this point we could advance the argument that the antecedent sentence has increased the specificity of the terms and hence the articulation has decreased.

15. Subparagraph (d) of Sec. 1310 appears to be applicable because of the scope of the terms used and particularly in light of the phrase appearing in the first sentence, to wit: "In the basic pay levels of those positions which are subject to other pay fixing authority..."

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.9 Hence, based on the foregoing presentation, it appears to the undersigned that we are most likely burdened with subparagraph (a) of Sec. 1310; that subparagraph (b) is not applicable; that subparagraph (c) is arguable on the basis heretofore presented;

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is presumed that some of the members of the Appropriations Committees who have served for years and know the CIA story, as well as the clerks who service members of the Committees, may be in a position to shed light over and above that which I have been able to perceive through reference to extrinsic aids and the logic of language. Hence, the existence of any on-the-spot inquiries to ascertain such matters as may have been considered would be extremely helpful to our cause at the present time.

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cc: Subject ✓

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requested no circulation on
paper)

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